REMARKS

Pursuant to 37 C.F.R. §1.111, reconsideration of the instant application, as amended herewith, is respectfully requested. Entry of the amendment is requested.

Claims 1-21 are presently pending before the Office. No claims have been canceled. Applicant has amended the claims. No new matter has been added. Support for the amendments can be found throughout the specification as originally filed. Applicant is not intending in any manner to narrow the scope of the originally filed claims.

The Examiner's Action mailed January 15, 2003 (Paper No. 8) and the references cited therein have been carefully studied by Applicant and the undersigned counsel. The amendments appearing herein and these explanatory remarks are believed to be fully responsive to the Action. Accordingly, this important patent application is believed to be in condition for allowance.

Relying on 35 U.S.C. §102(b), the Examiner has rejected the subject matter of claims 1-20 as being anticipated by US Patent No. 5,554,645 (the '645 patent). Applicant respectfully traverses the rejection and requests reconsideration.

Applicant respectfully submits that it is important to note that, historically, the Office and the Federal Circuit has required that for a §102 anticipation, a single reference must teach (i.e., identically describe) each and every element of the rejected claim. The Office has steadfastly and properly maintained that view.

The '645 patent fails this test. The '645 patent teaches procyanidin(s) extracted from cocoa and discloses its structure. However, the cited reference does not mention structural units nor component ratio of the procyanidin structure. On the other hand, the present application

clearly describes the component ratio of catechin to epicatechin in polyphenols extracted from buck wheat seeds in the specification.

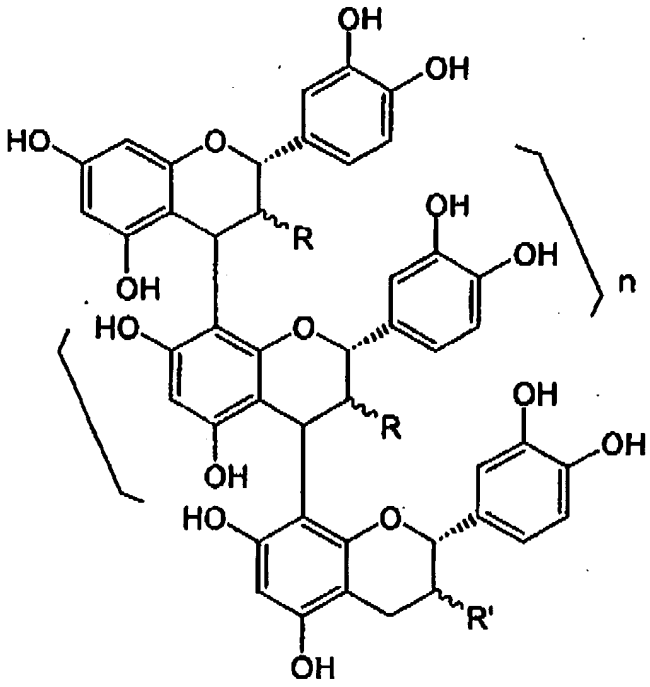
Catechin and epicatechin are stereoisomers, which have physical properties and physiological activities different from each other. Therefore, if the component ratio of catechin to epicatechin in the procyanidin of the '645 patent is different from that of the composition of the present invention, naturally, there shall be differences in the physical property and physiological property between the compositions of the two inventions (the present invention and the disclosed invention in the '645 patent).

With respect to the procyanidin of the '645 patent, only epicatechin is illustrated (in Fig. 3), and the reference is silent on the ratio of catechin to epicatechin. In fact, the reference does not present any information indicating the ratio.

With respect to the monomer compound, the '645 patent teaches the content ratio of catechin to epicatechin, 1.6% (catechin) to 38.2% (epicatechin) as disclosed in Table 4, and B-2 and B-5 dimers also comprises epicatechin. That is, the procyanidin extracted from cocoa mainly contains epicatechin in an amount larger than that of catechin.

On the other hand, the present invention discloses in detail data about the structural unit of the polyphenol polymer examined by the thiolysis method, as further described in Test 7 starting at page 25 of the specification. The results are analyzed on page 27. The formula

upper terminal



~~R : ····OH, —OH
(2:1)

~~R' : ····OH, —OH
(1:2)

n = 2to 7

lower terminal

representing a procyanidin oligomer , indicates that the ratio of catechin to epicatechin in the upper terminal and middle is 2 to 1, and 1 to 2 in the lower terminal.

Accordingly, the total ratio of catechin to epicatechin in the polycyanidin oligomer is represented by (2n + 3) : (n + 3). With the epicatechin ratio number being highest (n = 2), the ratio of catechin to epicatechin is 7 : 5, and therefore the content of epicatechin never exceeds that of catechin in the present invention.

Accordingly, each and every element of Applicant's claims have not been taught in that single reference. In other words, the rejected claims do not read literally on any single item of

prior art because the cited reference does not teach, disclose or suggest the present invention as claimed. Accordingly, Applicant respectfully submits that claims 1-20 have not been anticipated by the '645 patent under 35 U.S.C. §102(b), and respectfully requests that such rejection be withdrawn.

Relying on 35 U.S.C. §103(a), the Examiner has rejected the subject matter of claim 21 as obvious over the '645 patent in view of U.S. Patent No. 5,232,942. Applicant respectfully traverses the rejection and requests reconsideration.

It is evident that Applicant's invention is decidedly different from the teachings of the '645 patent for the reasons stated above, which are incorporated by reference for this 103(a) rejection. Further, the invention of the '942 patent, which is drawn to a low molecular weight compound, does not suggest the effects of the present invention. Accordingly, the Examiner has not established a prima facie case of obviousness.

The Office has used the claimed invention as a reference against itself as if it had preceded itself in time. Legal authority invalidates such an analytical or reverse engineering approach to patent examination. It is not Applicant's burden to refute the Office's position that it would have been obvious to one of ordinary skill in this art at the time this invention was made to arrive at the present invention in view of the combination of the cited references. It is the burden of the Office to show some teaching or suggestion in the reference to support this allegation. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d at 1051, 5 U.S.P.Q.2d at 1438-39 (Fed. Cir. 1988).

A finding by the Office that a claimed invention would have been obvious to one of ordinary skill in the art at the time the invention was made based merely upon finding similar elements in a prior art reference would be "contrary to statute and would defeat the congressional

purpose in enacting Title 35." Panduit Corp. v. Dennison Mfg. Co., 1 U.S.P.Q.2d 1593 at 1605 (Fed. Cir. 1987). Accordingly, Applicant respectfully submits that claim 21 is are patentable over the cited patents under 35 U.S.C. §103(a). Withdrawal of the rejection is respectfully requested.

CONCLUSION

Even though the initial claims in this important patent application were drawn to a new, useful and nonobvious invention, they have now been amended to increase their specificity of language.

A Notice of Allowance is earnestly solicited.

If the Office is not fully persuaded as to the merits of Applicant's position, or if an Examiner's Amendment would place the pending claims in condition for allowance, a telephone call to the undersigned at (727) 538-3800 would be appreciated.

Very respectfully,

Dated: 4/14/03

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